

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 7**

**UNITED FOOD & COMMERCIAL
WORKERS INTERNATIONAL UNION**

Union,

vs.

BOAR'S HEAD PROVISIONS CO., INC.,

Employer.

Case No. 07-CA-209874

07-CA-212031

MOTION TO RESCHEDULE HEARING PURSUANT TO 102.16(a)

& REQUEST FOR CONFERENCE CALL

NOW COMES Boar's Head Provisions Co., Inc. (Boar's Head), by its attorney, John Cruickshank, and pursuant to Rules 102.16(a) and 102.24(a) of the Rules and Regulations of the National Labor Relations Board ("NLRB"), and respectfully requests a conference call to discuss rescheduling the hearing in this matter set for August 20, 2018, and that the hearing itself be rescheduled by at least 4 days to August 24, 2018 or dates thereafter.

The grounds for rescheduling by at least 4 days, is that Mr. Scott Habermehl, the Director of Human Resources and a necessary and material witness for the hearing, is celebrating his 25th wedding anniversary and attending a long-standing celebration and family reunion. This trip was planned long before any hearing date was set. His family itinerary has him returning to Sarasota, Florida in the late evening of August 19, 2018. This makes him personally unavailable in the days leading up to the start of the trial despite being one of the most crucial witnesses, with personal knowledge of many of the matters at issue. On that basis, the company requests at least a 4-day postponement, to Thursday August 23, 2018 or dates thereafter. I have contacted United Food & Commercial Workers International Union ("UFCW") several times to discuss

rescheduling. On behalf of UFCW, Ms. Sarai King indicated that she opposed any rescheduling out of a belief that a new hearing date couldn't be set so soon after the originally scheduled date. With Boar's Head fully ready for August 24, 2018, so long as UFCW is also ready, everyone is ready to proceed before the Board. Alternatively, Boar's Head could be ready anytime within the two weeks following August 24, 2018. For the above reasons, we believe there is good cause to grant a motion to reschedule.

Separately, out of an abundance of caution, Boar's Head respectfully cites to the recent decision of the United States Supreme Court in *Lucia v. Securities and Exchange Commission*. In that decision, the Supreme Court invalidated the determination of an Administrative Law Judge ("ALJ") overseeing an adversarial hearing between parties, due to the fact that the ALJ had not been constitutionally appointed under the Appointments Clause. Note that the Supreme Court specifically invalidated the interpretation from the D.C. Circuit Court of Appeals holding that ALJ's were mere "employees"; and instead the Supreme Court identified them as "inferior officers" requiring they be appointed under the Appointments Clause.¹ This appears to create a risk of reversible error for some adversarial hearings involving government ALJs.

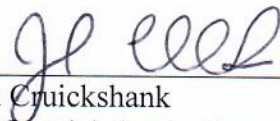
Boar's Head therefore respectfully requests to know whether the ALJ assigned to the above captioned cases was appointed to their position within the Agency, pursuant to the procedures outlined in the Appointments Clause, as explained by the Supreme Court in *Lucia*. If not, the Company requests to know the NLRB's position on: (1) whether it is necessary for the ALJ in the above-captioned cases to comply with the Appointments Clause; and (2) whether the NLRB believes the *Lucia* decision creates any risk for reversible error for the above-captioned cases.

¹ 585 U.S. ____ n.3 (2018).

We are fully available for a conference call to discuss in good faith the parties' availability for the rescheduling of the hearing and to reassure all parties that the outcome of the hearing will not be at risk of reversible appeal. Furthermore, we again request that during that call, the NLRB agree to reschedule the hearing date by at least 4 days, until no earlier than August 24, 2017.

Dated 6-28-18

CRUICKSHANK & ALANIZ, LLP

A handwritten signature in blue ink, appearing to read "JC Cruickshank", is written over a horizontal line.

John Cruickshank

john@cruickshank.attorney

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ORDER GRANTING CONFERENCE CALL

I, the undersigned representative of the Board having lawful authority over the scheduling of the hearing in 07-CA-209874 & 07-CA-212031, do hereby grant Employer's request for a conference call to clarify whether the ALJ assigned to the cases has met the requirements of the Appointments Clause and to address party concerns. And to address whether the NLRB is willing to grant Employers' motion to reschedule.

GRANTED/DENIED. Call is scheduled for _____.

Signature

Print Name

Title

Date

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ORDER GRANTING REQUEST TO RESCHEDULE

I, the undersigned representative of the National Labor Relations Board having lawful authority over the scheduling of the hearing in 07-CA-209874 & 07-CA-212031, do hereby GRANT/DENY Employer's request to reschedule.

The new hearing date is _____.

It is so ordered.

Signature

Print Name

Title

Date

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Affidavit of Service

The undersigned, being duly sworn, deposes and says that on 6/29/18, on behalf of Boar's Head Provisions Co., Inc. (Boar's Head), sent a copy of Boar's Head's Motion to Reschedule Hearing to the parties whose names are set forth below, via email.

Chief Administrative Law Judge Robert Giannasi
Robert.giannasi@nlrb.gov

Regional Director Terry Morgan
Terry.morgan@nlrb.gov

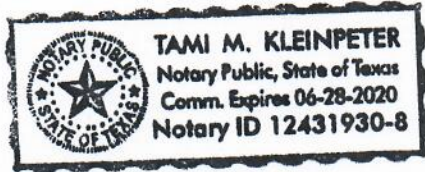
Ms. Colleen Carol
Colleen.carol@nlrb.gov

Mr. Andrew Hampton
Andrew.Hampton@nlrb.gov

Ms. Sarai King
sking@ufcw.org

John Cruickshank
John Cruickshank

SUBSCRIBED AND SWORN TO me on this 28 day of June 2018.



Tami M. Kleinpeter
Notary Public, In and For
The State of Texas

Tami M. Kleinpeter
Printed Name of Notary

Commission Expires:

6-28-2020